

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TAMMIE LAMPHERE, Personal
Representative of the ESTATE OF
KRISTOPHOR JOHN LAMPHERE,
deceased, TAMMIE LAMPHERE,
individually, MARISSA CHACON,
individually, by and thru her mother,
TAMMIE LAMPHERE, BRIANA
CHACON, individually, by and through her
mother, TAMMIE LAMPHERE, LINDA
KOLM, Personal Representative of the
ESTATE OF KARL KOLB, deceased,
LINDA KOLB, individually, BRETT KOLB,
individually, DONALD L. WOMBLE, SR.,
Personal Representative of the ESTATE
OF DONALD L. WOMBLE, JR.,
deceased, DONALD L. WOMBLE, SR.,
individually, JEANNE WOMBLE,
individually, KRISTIN WOOMBLE,
individually, by and through her mother,
STACEY L. GARDNER, AMBER
WOMBLE, individually, DONALD L.
WOMBLE, III, by and through his mother,
STACEY L. GARDNER,

Plaintiffs,

vs.

UNITED STATE OF AMERICA,

Defendant.

CASE NO. 06CV2174-LAB (JMA)
(Consol. w/ 06cv2175, 06cv2192)

**ORDER GRANTING MOTION FOR
LEAVE TO FILE FIRST
AMENDED COMPLAINT**

[Dkt No. 24]

This consolidated action is before the court on Plaintiffs' Motion For Leave To File
First Amended Complaint ("Motion") for the purpose of joining necessary parties in this

1 Federal Tort Claims Act ("FTCA") matter. Defendant the United States filed Opposition, and
2 Plaintiffs filed a Reply. Pursuant to Civil Local Rule 7.1(d)(1), the court finds the issues
3 presented appropriate for decision on the papers and without oral argument. For the
4 reasons discussed below, the Motion is **GRANTED**.

5 This action arises from the October 24, 2004 mountain crash of a Learjet after take-off
6 from San Diego's Brown Field Municipal Airport. All five persons on board were killed.
7 Plaintiffs seek damages for wrongful death and loss of consortium. By Order entered
8 May 10, 2007, this court granted Plaintiffs' unopposed motion establishing New Mexico law
9 applies to the claims of New Mexico resident plaintiffs. Plaintiffs request leave to amend the
10 Complaint to add eight named plaintiffs who purportedly can state loss of consortium claims
11 under New Mexico's broad definition of persons eligible to receive such damages.

12 The United States opposes the Motion on grounds two of the new plaintiffs identified
13 in the [Proposed] First Amended Complaint, Thomas A. Lamphere and Cheryl L. Lesar,
14 failed to present administrative claims pursuant to 28 U.S.C. § 2675(a), a jurisdictional
15 prerequisite to their standing to seek FTCA damages. See, e.g., McNeil v. United States,
16 508 U.S. 106 (1993); Cadwalder v. United States, 45 F.3d 297 (9th Cir. 1995). Plaintiffs
17 concede in their Reply those two proposed plaintiffs filed no administrative claims. Plaintiffs
18 offer an [Amended Proposed] First Amended Complaint eliminating those claimants from the
19 action. The government's objection is accordingly **OVERRULED AS MOOT**.

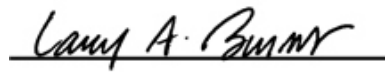
20 The United States also opposes the Motion on grounds the other six individuals have
21 not alleged facts sufficient to establish they are proper loss of consortium claimants.
22 Plaintiffs apparently concede the language of the [Proposed] First Amended Complaint fails
23 to allege all elements necessary to state an actionable relationship with decedent[s] under
24 New Mexico law. The [Amended Proposed] First Amended Complaint restates the
25 relationship description at Paragraphs 22 and 25. As noted by Plaintiffs: "Moving plaintiffs
26 have now met all the concerns and objections as stated by defendants by submitting the
27 [Amended Proposed] First Amended Complaint." Reply 2:20-21.

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1 For the forgoing reasons, **IT IS HEREBY ORDERED** the Motion is **GRANTED**.
2 Plaintiffs shall forthwith file as their First Amended Complaint their [Amended Proposed] First
3 Amended Complaint.

4 **IT IS SO ORDERED.**

5 DATED: July 10, 2007

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7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge
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